

Appl. No.: 09/882,834
Amdt. dated 03/24/2006
Reply to Official Action of October 28, 2005

REMARKS

This communication is filed in response to the third, non-final Official Action of October 28, 2005. By way of background, we previously received a restriction requirement, dividing the claims into two groups, Group I including Claims 1-20 directed to a system and method for managing inventory, and Group II including Claims 21-58 directed to a system, method and computer program product for transferring electronic files. Following election of the claims of Group I, Claims 1-20 are now considered by the third Official Action.

In the third Official Action, all of Claims 1-20 are no longer rejected 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0010659 to Cruse et al., in view of U.S. Patent No. 5,638,519 to Haluska. Instead, the third Official Action rejects all of Claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over the Cruse publication, in view of U.S. Patent No. 6,937,992 to Benda et al. In response, Applicants have amended independent Claims 1 and 11 to further clarify the claimed invention. In view of the amendments to Claims 1 and 11, Applicants have also cancelled Claims 10 and 20. Applicants have also amended independent Claim 1 to more distinctly claim and particularly point out the subject matter which Applicants regard as the invention. Further, Applicants have added new dependent Claims 59 and 60 to recite further patentable features of the claimed invention. As explained below, Applicants respectfully submit that the claimed invention is patentably distinct from the Cruse publication and Benda patent, taken individually or in combination. In view of the amendments to independent Claims 1 and 15, and the remarks presented herein, Applicant respectfully requests reconsideration and allowance of all of the claims of the present application.

A. Amendment to Claim 1

With respect to the amendment to independent Claim 1, Applicants note that the first Official Action rejected method Claims 1, 2, 7, 9 and 10 under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. More particularly, the first Official Action asserted that for a claim to be directed to statutory subject matter, the subject invention (a) must be within the technological arts, and (b) must produce a useful, concrete and tangible result. And although the first Official Action conceded that the subject invention produces a useful, concrete and tangible

Appl. No.: 09/882,834
Amdt. dated 03/24/2006
Reply to Official Action of October 28, 2005

result, the first Official Action alleged that Claims 1, 2, 7, 9 and 10 did not apply, involve, use or advance the technological arts since all of the recited steps may be performed manually. In response, Applicants amended independent Claim 1 to further recite that at least one of the recited creating, maintaining or monitoring steps is at least partially performed by a processing unit. Since Applicants' response to the first Official Action, the Board of Patent Appeals and Interferences issued an opinion rejecting the aforementioned "technological arts" test for patentable subject matter. *Ex Parte Lundgren*, Appeal No. 2003-2088 (Bd. Pat. App. & Inter. 2005). Accordingly, Applicants have amended independent Claim 1 to remove the previously added recitation directed to a processing unit performing one or more of the recited steps of the claimed method. And in view of the Board's decision in *Ex Parte Lundgren*, Applicants respectfully submit that, even without the aforementioned feature, Claims 1, 2, 7, 9 and 10 are directed to statutory subject matter.

B. *Cruise Publication and Benda Patent*

As previously explained in response to the first and second Official Actions, the Cruise publication provides an inventory management/control system that enables point of use replenishment coupled with available centralized oversight. As disclosed, when inventory reaches a pre-set level (from a two-bin/kanban arrangement), a code representative of the particular stock is forwarded to a central database repository. From the central database repository, a purchase order can be sent to a pre-identified supplier such that the supplier can thereafter ship the stock directly to the point of use. A receipt and/or a code indicative of the new stock can then be entered into the system. As also disclosed, centralized authority can be granted access to the central database repository to enable review, modification and configuration of all or a part of the total inventory situation.

The Benda patent discloses a transport vehicle capacity maximization logistics system and method. As disclosed, a number of manufacturers interface with a central facility or a cross-dock, which in turn, interfaces with a number of customers. The central facility receives and processes inventory information of distributors or customers and then correlates that information to shipments from the manufacturers to the customer in a manner that maximizes transport

Appl. No.: 09/882,834
Amdt. dated 03/24/2006
Reply to Official Action of October 28, 2005

vehicle capacity. In this regard, the central facility determines the difference between the maximum vehicle capacity and the capacity requirements associated with the merchandise initially ordered, that difference being the amount of unused capacity. For any unused capacity, then, the central facility may add new merchandise sufficient to reach maximum vehicle capacity.

C. *The Claimed Invention is Patentable over Cruise and Benda*

The claimed invention of amended independent Claim 1 provides a method for managing an inventory of a product of a supplier that is provided to a customer. As recited, the method includes creating an open purchase order including a minimum and a maximum of acceptable inventory of the product. A supply amount of the product is stored in a storage unit that is remote from the supplier and proximate to the customer (from which additional amounts of the product can be provided to the customer). A product inventory count for the product is maintained by decreasing the product inventory count as the customer ships out the product, and conversely increasing the product inventory count as the customer receives additional amounts of the product. As also recited, the product inventory count is monitored at a supplier location (remote from the customer location) such that the supplier is capable of detecting when product inventory counts approach the respective lower limits by falling below a notification level greater than the lower limit and between the lower limit and the upper limit.

As explained in response to the first Official Action, and conceded in the second and third Official Actions, the Cruse publication does not teach or suggest monitoring inventory of a consumer at a supplier location (remote from the customer location) such that the supplier is capable of detecting when product inventory counts approach a lower inventory limit. Nonetheless, the third Official Action alleges that the Benda patent teaches this feature of the claimed invention, and that it would have been obvious to one skilled in the art to modify the Cruse system with the teachings of the Benda patent to disclose the claimed invention. The third Official Action alleges that one skilled in the art would be motivated to modify the Cruse system with the teachings of the Benda patent "in order to facilitate the ordering process and provide better service for customers."

Appl. No.: 09/882,834
Amdt. dated 03/24/2006
Reply to Official Action of October 28, 2005

In contrast to the third Official Action, Applicants respectfully submit that the Benda patent, like the Cruse publication, does not teach or suggest monitoring inventory of a consumer at a supplier location (remote from the customer location) such that the supplier is capable of detecting when product inventory counts approach a lower inventory limit by falling below a notification level greater than the lower limit and between the lower limit and the upper limit, as recited by amended independent Claim 1. The Benda patent does disclose vendor managed inventory (VMI) model whereby a manufacturer monitors a distributor's inventory and places orders for added inventory, such that inventory ordering and fulfillment are offloaded from a customer to a manufacturer. As further disclosed, the manufacturer assumes responsibility for ordering and fulfillment, subject to agreed-upon standards for inventory levels and quality of service. Nowhere does the Benda patent teach or suggest, however, that the manufacturer, the central facility or any other entity monitors inventory to detect when inventory counts approach, but do not reach, a lower limit (i.e., approach a lower limit by falling below a notification level greater than the lower limit and between the lower and upper limits). The Benda patent does indicate that a manufacturer may replenish inventory "as needed," but even in this instance, the Benda patent provides no insight as to what is exactly meant by "as needed," much less that it indicates that inventory level is approaching a lower limit.

Also in contrast to the claimed invention of independent Claim 1, neither the Cruse publication nor the Benda patent teaches or suggests that the customer receives additional amounts of inventory from the supply amount stored in the storage unit located remote from the supplier and proximate the customer. The third Official Action cites the Cruse publication for disclosing this feature of the claimed invention. As disclosed by the Cruse publication, the customer maintains an inventory 210 of stock, where the customer's production line 205 depletes the inventory. To replenish the inventory, then, a vendor 125, 135 receives an order from the customer, and sends a shipment 225 to the customer. See Cruse Publication, paragraph 30, FIG. 2. Alternatively, the customer or vendor can send an order to a proprietary distribution center, from which the shipment is sent to the customer. In either event, however, the Cruse publication does not teach or suggest that the customer's inventory is replenished (i.e., the customer receives additional amounts of a product to thereby increase the product inventory count) from a location

Appl. No.: 09/882,834
Amdt. dated 03/24/2006
Reply to Official Action of October 28, 2005

(i.e., a storage unit) remote from the vendor and proximate to the customer. At most, it could be suggested that the proprietary distribution center is located remote from the vendor. Even in such an instance, however, the Cruse publication does not disclose any location relationship between the proprietary distribution center and the customer, much less that the proprietary distribution center is located proximate the customer, in a manner similar to that recited by the claimed invention.

Applicants therefore respectfully submit that the claimed invention of amended independent Claim 1, and by dependency Claims 2-10 and 59, is patentably distinct from the Cruse publication and Benda patent, taken individually or in combination. Applicants also respectfully submit that the claimed invention of amended independent Claim 11 recites subject matter similar to that of amended independent Claim 1. For example, like amended independent Claim 1, amended independent Claim 11 recites that the supplier and/or second processing unit disposed proximate the supplier is capable of monitoring the product inventory count such that the supplier and/or second processing unit is capable of detecting product inventory counts that approach a lower limit by falling below a notification level greater than the lower limit and between the lower limit and the upper limit. Also like amended independent Claim 1, amended independent Claim 11 recites a storage unit remote from the supplier and proximate the customer, where the supplier provides product to the customer from a supply amount of the product stored in the storage unit. Applicants therefore also respectfully submit that the claimed invention of amended independent Claim 11, and by dependency Claims 12-20 and 60, is patentably distinct from the Cruse publication and Benda patent, taken individually or in combination, for at least the same reasons given above with respect to amended independent Claim 1.

For at least the reasons given above, then, Applicants respectfully submit that the claimed invention of Claims 1-20 is patentably distinct from the Cruse publication and Benda patent, taken individually or in combination. As such, Applicants further respectfully submit that the rejection of Claims 1-20 as being unpatentable over the Cruse publication in view of the Benda patent is overcome.

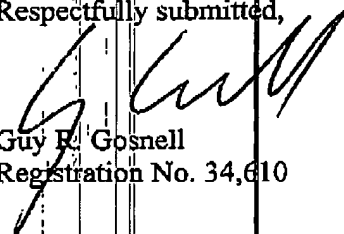
Appl. No.: 09/882,834
Amdt. dated 03/24/2006
Reply to Official Action of October 28, 2005

CONCLUSION

In view of the amendments to the claims, the added claims, and the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

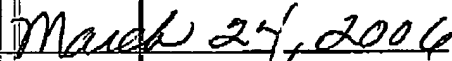

Guy R. Gosnell
Registration No. 34,610

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. (571) 273-8300 on the date shown below.


Sarah B. Simmons


Date